No. _____

Supreme Court, U.S.
FILED
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In The Supreme Court of the United States

PRINCE AHADZIE DANIELS,

Petitioner,

v.

ALBERTO GONZALES,
UNITED STATES ATTORNEY GENERAL,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Given that the Fifth Circuit erred by stating that the Board of Immigration Appeals addressed the merits of Prince Daniels' Convention Against Torture claim, should this case be remanded so that the Board of Immigration Appeals can address the merits of Prince Daniels' Convention Against Torture claim?

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I. OPINIONS BELOW

The Fifth Circuit's unpublished opinion, *Daniels v. Gonzales*, No. 05-61042, 2006 WL 2990103 (Oct. 20, 2006), is on pages 1-3 of the Appendix. The Board of Immigration Appeals' unpublished decision, *Matter of Daniels*, A90-893-761 (BIA Oct. 13, 2005), is on pages 4-6 of the Appendix. The Immigration Judge's unpublished decision, *Matter of Daniels*, A90-893-761 (July 23, 2004), is on pages 7-11 of the Appendix.

II. JURISDICTION

The Fifth Circuit entered its judgment in this case on October 20, 2006. *Daniels v. Gonzales*, No. 05-61042, 2006 WL 2990103 (Oct. 20, 2006). In compliance with Supreme Court Rule 13, this petition has been filed within ninety days of the Fifth Circuit's judgment. Under 28 U.S.C. § 1254, the Supreme Court has jurisdiction to review the Fifth Circuit's judgment.

III. STATUTE INVOLVED IN THIS CASE

Section 242(a)(2)(D) of the Immigration and Nationality Act, 8 U.S.C. § 1252(a)(2)(D), states:

> Nothing in subparagraph (B) or (C), or in any other provision of this chapter (other than this section) which limits or eliminates judicial review, shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.

IV. STATEMENT OF THE CASE

Prince Daniels is the father of a NFL player – Baltimore Ravens running back P. J. Daniels. Prince Daniels ("Daniels") has been a lawful permanent resident for more than seventeen years and is the father of five U.S. citizen children.

Daniels, who was born in Ghana, applied for withholding of removal under the Immigration and Nationality Act (INA) and under the Convention Against Torture. On July 23, 2004, the Immigration Judge denied Daniels' application for withholding of removal and ordered Daniels removed to Ghana. (Appendix at 7-11.) The Immigration Judge's decision discusses Daniels' application for withholding of removal under INA § 241(b)(3), 8 U.S.C. § 1231(b)(3), but the Immigration Judge's decision does not mention Daniels' Convention Against Torture claim. (Appendix at 7-11.)

On October 13, 2005, the Board of Immigration Appeals (the "Board") affirmed the Immigration Judge's order of removal against Daniels. (Appendix at 4-6.) The Board's decision does not address the merits of Daniels' Convention Against Torture claim. (Appendix at 4-6.) On October 20, 2006, the Fifth Circuit denied Daniels' appeal of the Board's decision. (Appendix at 1-3.)

The Fifth Circuit's decision correctly states that under 8 U.S.C. § 1252(a)(2)(D), the Fifth Circuit has jurisdiction to review the following question of law: whether the Board erred by failing to address the merits of Daniels' Convention Against Torture claim. *Daniels v. Gonzales*, No. 05-61042, 2006 WL 2990103, at *1 (Oct. 20, 2006). However, the Fifth Circuit's decision incorrectly states that the Board addressed the merits of Daniels' Convention Against Torture claim. *Id.*

V. ARGUMENT

A. The Immigration Judge's decision does not address Daniels' Convention Against Torture claim

An application for withholding of removal under the Convention Against Torture "should receive separate analytical attention" from an application for withholding of removal under INA § 241(b)(3), 8 U.S.C. § 1231(b)(3). *Efe v. Ashcroft*, 293 F.3d 899, 906-07 (5th Cir. 2002). The Immigration Judge's decision discusses Daniels' application for withholding of removal under INA § 241(b)(3), 8 U.S.C. § 1231(b)(3), but the Immigration Judge's decision does not discuss, or even mention, Daniels' Convention Against Torture claim. (Appendix at 7-11.)

> The Immigration Judge's decision states:
>
> [I]n order to qualify for withholding of removal, respondent must be a refugee as defined by the statute, as he must show that he has been persecuted in the past or has a well-founded fear of future persecution because of his race, religion, nationality, membership in a particular social group, or political opinion.

(Appendix at 10.) However, "CAT [Convention Against Torture] regulations do not require that the reason for the torture fall within one of the five categories of race, religion, nationality, membership in a particular social group, or political opinion." *Efe v. Ashcroft*, 293 F.3d 899, 907 (5th Cir. 2002). Therefore, the Immigration Judge's analysis does not apply to Daniels' Convention Against Torture claim. Accordingly, in the brief that Daniels submitted to the Board,

Daniels argued that the Immigration Judge erred by not addressing Daniels' Convention Against Torture claim. (Administrative Record at 11-14.) The Board's decision acknowledges that "[o]n appeal, the respondent complains that the Immigration Judge failed to address his application for relief under the Convention Against Torture . . . ." (Appendix at 6.)

B. The Board's decision is based on two erroneous grounds

The Board's decision lists only two grounds for why the Board ruled that the Immigration Judge's failure to address Daniels' Convention Against Torture claim was not erroneous. The Board's first ground is that "on the two occasions that the respondent's counsel discussed the respondent's applications for relief, relief under the Convention Against Torture was not mentioned. Rather, the respondent requested only **withholding of removal**." (Appendix at 6) (emphasis added). However, withholding of removal is a form of relief under the Convention Against Torture. 8 C.F.R. § 1208.16(c). Therefore, by applying for withholding of removal, Daniels applied for relief under the Convention Against Torture. Moreover, the top of page one of an application for withholding of removal states: "Please check the box if you also want to apply for withholding of removal under the Convention Against Torture." (Administrative Record at 107.) **A "X" is in this box in Daniels' application for withholding of removal, (Administrative Record at 107), and a "X" is also in the "Torture Convention" box on page five of Daniels' application for withholding of removal**, (Administrative Record at 111). Therefore, the Board erred by stating that

Daniels did not apply for relief under the Convention Against Torture.

The Board's decision lists a second ground for why the Board ruled that the Immigration Judge's failure to address Daniels' Convention Against Torture claim was not erroneous. The Board's decision contends that Daniels "failed to **allege** that he more likely than not would be tortured by, or with the acquiescence of, the government of Ghana." (Appendix at 6) (emphasis added). The term "allege" is boldfaced in the above quotation to emphasize that the Board's decision addresses only Daniels' allegations, not Daniels' evidence. Therefore, the allegations in Daniels' application for withholding of removal will now be discussed.

Daniels' application for withholding of removal was marked as Exhibit 7 by the Immigration Judge, (Administrative Record at 107), and the Immigration Judge admitted into evidence all of the exhibits in this case, (Administrative Record at 62). Daniels' application for withholding of removal states: "If I return to Ghana, I will be persecuted, **tortured**, and/or killed by the government because my father was opposed to the government and the government will impute my father's political opinions to me." (Administrative Record at 111) (emphasis added). Therefore, the Board erred by stating that Daniels "failed to allege that he more likely than not would be tortured by, or with the acquiescence of, the government of Ghana," (Appendix at 6), and the Board erred by failing to address the merits of Daniels' Convention Against Torture claim.

C. This case should be remanded because the Board's decision cannot be upheld on any grounds not articulated in the Board's decision

The Board's decision lists only two grounds for why the Board ruled that the Immigration Judge's failure to address Daniels' Convention Against Torture claim was not erroneous. (Appendix at 6.) Both of the grounds listed in the Board's decision are erroneous. *See supra* section V.B. Because the Board's decision cannot be upheld on any other grounds, this case should be remanded. *See Federal Power Commission v. Texaco Inc.*, 417 U.S. 380, 397 (1974) ("[W]e cannot accept appellate counsel's *post hoc* rationalizations for agency action; for an agency's order must be upheld, if at all, on the same basis articulated in the order by the agency itself") (internal quotation marks omitted); *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947) ("[A] reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency. If those grounds are inadequate or improper, the court is powerless to affirm the administrative action by substituting what it considers to be a more adequate or proper basis"), *cited with approval in INS v. Ventura*, 537 U.S. 12, 16 (2002). Therefore, the Court should not address whether Daniels presented sufficient evidence in support of his Convention Against Torture claim, given that the Board's decision does not address the merits of Daniels' Convention Against Torture claim. *See supra* section V.B.

It should be noted that only grounds articulated with clarity in the Board's decision can be reviewed. *Chenery Corp.*, 332 U.S. at 196-97 ("If the administrative action is to be tested by the basis upon which it purports to rest, that

basis must be set forth with such clarity as to be understandable. It will not do for a court to be compelled to guess at the theory underlying the agency's action; nor can a court be expected to chisel that which must be precise from what the agency has left vague and indecisive").

D. The Fifth Circuit erred by stating that the Board addressed the merits of Daniels' Convention Against Torture claim

Supreme Court Rule 10(a) states that in deciding whether to grant a petition for a writ of certiorari, the Court considers whether a court of appeals "has so far departed from the accepted and usual course of judicial proceedings ... as to call for an exercise of this Court's supervisory power." The Fifth Circuit's decision states: "Daniels also asserts the BIA erred in failing to address the merits of his CAT claim. This court has jurisdiction to review this question of law. Contrary to Daniels' argument, however, the BIA considered and rejected the CAT claim." *Daniels v. Gonzales*, No. 05-61042, 2006 WL 2990103, at *1 (Oct. 20, 2006) (citation omitted).

The Fifth Circuit "has so far departed from the accepted and usual course of judicial proceedings" because it is obvious from the Board's decision that the Board did not address the merits of Daniels' Convention Against Torture claim. If the Board had addressed the merits of Daniels' Convention Against Torture claim, the Board would have stated that Daniels did or did not prove that he likely would be tortured. Instead of stating this, the Board's decision addresses only Daniels' **allegations**, not Daniels' evidence. The Board's decision contends that Daniels "failed to **allege** that he more likely than not would be tortured by, or with the

acquiescence of, the government of Ghana." (Appendix at 6) (emphasis added). The Board's use of the term "allege" instead of "prove" means that the Board did not address the merits of Daniels' Convention Against Torture claim because if the Board had addressed the merits of Daniels' Convention Against Torture claim, the Board would have addressed Daniels' evidence, not Daniels' allegations. Therefore, the Fifth Circuit erred by stating that the Board addressed the merits of Daniels' Convention Against Torture claim. This case should be remanded so that the Board can address the merits of Daniels' Convention Against Torture claim. *See supra* section V.C.

VI. CONCLUSION

For the foregoing reasons, Daniels respectfully requests that the Court grant this petition for a writ of certiorari.

Respectfully submitted,

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No. _____

In The Supreme Court of the United States

PRINCE AHADZIE DANIELS,

Petitioner,

v.

ALBERTO GONZALES,
UNITED STATES ATTORNEY GENERAL,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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APPENDIX

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United States Court of Appeals
Fifth Circuit
FILED
October 20, 2006

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-61042
Summary Calendar

PRINCE AHADZIE DANIELS,

Petitioner,

versus

ALBERTO R. GONZALES, UNITED STATES ATTORNEY GENERAL,

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
(BIA No. A90 893 761)

Before DAVIS, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Prince Adhazie Daniels, a citizen and native of Ghana, has petitioned for review of a Board of Immigration Appeals (BIA) decision dismissing his appeal from an order of removal. Pursuant to § 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(a)(2)(A)(i)(I), the Immigration and Naturalization Service (INS) initiated removal proceedings against Daniels based on his convictions for crimes involving moral turpitude. Daniels sought withholding of removal under § 241(b)(3) of the INA, 8 U.S.C. § 1231(b)(3), and under the Convention Against Torture (CAT), *see* 8 C.F.R. § 1208.16, based on alleged persecution in Ghana; Daniels claimed threats had been made against him due to his father's political views. The immigration judge (IJ) denied Daniels' request for withholding removal and ordered him removed to Ghana. The IJ's decision did not address specifically Daniel's CAT claim.

Daniels appealed to the BIA, again seeking withholding of removal under the INA and also asserting the IJ erred in failing to address his CAT claim. The BIA adopted and affirmed the IJ's decision and rejected Daniels' CAT claim, finding he "failed to allege facts which would indicate the applicability of this relief" and "failed to allege that he more likely than not would be tortured by, or with the acquiescence of, the government of Ghana".

Daniels contends he is entitled both to withholding of removal and to relief under CAT. The Government counters that this court lacks jurisdiction because Daniels' removal was predicated on his commission of crimes involving moral turpitude and does not present constitutional claims or questions of law.

Daniels admits that, pursuant to § 212(a)(2)(A)(i)(I) of the INA, 8 U.S.C. § 1182(a)(2)(A)(i)(I), his removal order was based on his commission of crimes involving moral turpitude. Congress has restricted this court from reviewing such removal orders. 8 U.S.C. § 1252(a)(2)(C) (stating "no court shall have jurisdiction to review any final order of removal against an alien who is removable by reason of having committed a criminal offense covered in section 1182(a)(2) . . .of this title"); *see also Alwan v. Ashcroft,* 388 F.3d 507, 515 (5th Cir. 2004) (applying jurisdictional bar to claims under both the INA and CAT). Therefore, concerning Daniels' claim that the decisions of the IJ and BIA were not supported by substantial evidence, the petition is **DISMISSED IN PART** for lack of subject matter jurisdiction.

Daniels also asserts the BIA erred in failing to addressthe merits of his CAT claim. This court has jurisdiction to review this question of law. See 8 U.S.C. § 1252(a)(2)(D). Contrary to Daniels' argument, however, the BIA considered and rejected the CAT claim. Therefore, with respect to this contention, Daniels' petition is **DENIED IN PART.**

DISMISSED IN PART*; *DENIED IN PART

---

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should *not* be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: DANIELS, PRINCE AHADZIE A90-893-76

Date of this notice: 10/13/2005

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

s/_____
Frank Krider

Chief Clerk

Enclosure

Panel Members:

PAULEY, ROGER

U.S. Department of Justice
Decision of the Board of Immigration Appeals
Executive Office for Immigration Review

Falls Church, Virginia 22041

File: A90 893 761 - Houston Date: OCT 13 2005

In re: PRINCE AHADZIE DANIELS
IN REMOVAL PROCEEDINGS
APPEAL

ON BEHALF OF RESPONDENT: Ajay Choudhary, Esquire

ON BEHALF OF DHS: Lisa Luis. Assistant Chief Counsel

ORDER:

PER CURIAM. We adopt and affirm the decision of the Immigration Judge dated July 23. 2004. *See Matter of Burbano,* 20 I&N Dec. 872,874 (BIA 1994) (noting that adoption or affirmance of a decision of an Immigration Judge, in whole or in part, is "simply a statement that the Board's conclusions upon review of the record coincide with those which the Immigration Judge articulated in his or her decision").

The Immigration Judge denied the respondent's application for withholding of removal, pursuant to section 241 (b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3) (1997). We concur that the respondent

failed to show a clear probability that his life or freedom would be threatened on account of a protected ground if returned to Ghana, and is not entitled to withholding of removal. *See INS* v. *Stevic,* 467 U.S. 407 (1984); 8 U.S.C. § 1231(b)(3) (1997); 8 C.F.R. § 1208.16 (2005). The respondent was not detained, threatened, or harmed in Ghana, and the respondent has failed to show a clear probability that he will be.

On appeal, the respondent complains that the Immigration Judge failed to address his application for relief under the Convention Against Torture, pursuant to 8 C.F.R. §§ 1208.16 through 1208.18 (2005). However, on the two occasions that the respondent's counsel discussed the respondent's applications for relief, relief under the Convention Against Torture was not mentioned. Rather, the respondent requested only withholding of removal. *See* Tr. at 12, 14. In addition, we note that the respondent failed to allege facts which would indicate the applicability of this relief. He failed to allege that he more likely than not would be tortured by or with the acquiescence of, the government of Ghana. *See* 8 C.F.R. § 1208.16(c)(2) (2005).

Accordingly, the appeal is dismissed.

s/_____
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
Houston, Texas

File No.: A 90 893 761 July 23, 2004

In the Matter of

PRINCE AHADZIE DANIELS,	)	IN REMOVAL
	)	PROCEEDINGS
Respondent	)	

CHARGE: Section 212(a)(1)(I) of the Act -- for having committed acts which constitute the elements essential to a crime involving moral turpitude

APPLICATION: Withholding of removal

ON BEHALF OF RESPONDENT:	ON BEHALF OF DHS:
A. J. Choudhary, Esquire	Lisa Luis, Esquire Assistant Chief Counsel

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent in this case is a native and citizen of Ghana. He was placed in removal proceedings January 12th, 2003, as an arriving alien for being ineligible for admission to the United States because on April 7th, 1997, he was convicted in Harris County, Texas for the offense of theft in violation of the state laws, which constituted a crime involving moral turpitude. The respondent was placed in removal proceedings, and at the master calendar hearing, the respondent through his attorney initially denied that he was

an arriving alien and denied allegations 3 and 4, admitted 1 and 2, and denied that he was removable as charged. However, subsequently, on April 15th, the respondent admitted to all allegations in the charging document and conceded that he was removable as charged, and the Court sustained the charge.

The respondent requested an opportunity to apply for relief through withholding of removal and declined to apply for voluntary departure. The matter was set for a hearing on the merits, and on July 23rd, 2004, the respondent appeared and testified as the only witness in support of his application.

The respondent testified that he has been a legal permanent resident since 1989 and he has four U.S. citizen children. He came to the United States some time ago, and he testified that he fears returning to his native country because his father was a district commissioner under the Convention People's Party, that is, Kwame Nkrumah's Communist party. The respondent testified that this particular party was very brutal to the opposition, and there was a coup in 1986, and that the respondent's father was sentenced to three years in jail. And in 1969 he was arrested again, and eventually the respondent's father fled from Ghana to Togo, and he never returned.

The respondent entered the United States some 10 years thereafter. He testified that there were threats against his life because of his father's association with the party, and because his father's party persecuted opposition families and the opposition families were retaliating. The respondent testified that these victims retaliated against the respondent because they imputed his father's political opinions to him.

The respondent's testimony revolved around the period 1978 to 1979, some 24 or 25 years ago. The

respondent testified as to recent issues, that four months ago a friend of his was killed when he returned to Ghana, and this friend's uncle and father were part of the Kwame Nkrumah regime. However, the respondent doesn't know who was responsible for the killing of his friend nor why his friend was killed. The Court asked whether or not it could have been a robbery. The respondent has no evidence or newspaper clippings or anything to indicate that the death of the friend was related to a coup that took place almost 30 years, or related to any victims' families who might have been retaliating for things that occurred some 25 or 30 years ago.

The respondent testified that the government could not protect him. However, the record reflects that he did return to Ghana several times since he's been here in the United States. Initially the respondent testified that he just returned two times; however, upon cross-examination it appears that the respondent has returned almost twice as many times as that and that he has returned as recently as 2003. The respondent testified that he returned to his country for his father's funeral in 1992, and then again to bury his wife in 2000, and for his mother's funeral in 2001. He has returned several times to take care of family business, and went back to Accra in January of 2003 and also in June of 2002 without incident on any of those occasions, which greatly weakens the respondent's argument that he would have some reason to be concerned if he were to return. It appears that he has returned frequently without incident. The respondent's argument is that vigilante justice is a real problem in Ghana. Respondent, however, has no political affiliations, and he maintains a house in Ghana in Tema where some friends live and maintain and care for the house.

The respondent testified that his problems were that in 1973, someone threw a fireball at the house. In 1974, someone broke into the house while he was away and stole some items. In 1974 and 1975 his uncle's daughter was murdered, some 30 years ago, in the house, but the respondent didn't give any details on the reason for that. The respondent still owns the same house in Ghana in Accra.

The respondent did not have any documents regarding his father's involvement in the Kwame Nkrumah party. However, the court listened to the respondent's testimony, and his testimony appeared to be consistent and truthful, and the Court does not doubt the respondent's story.

The respondent does not have any articles on the death of his friend, Justice Amrikouli, that he spoke about that he says was killed recently. He testified that his last contact with this friend was about a year ago.

And as mentioned above, the respondent has never been affiliated with any political party.

The Court listened closely to the respondent's testimony, and in order to qualify for withholding of removal, respondent must be a refugee as defined by the statute, as he must show that he has been persecuted in the past or has a well-founded fear of future persecution because of his race, religion, nationality, membership in a particular social group, or political opinion. In this particular case, there is really no evidence of any persecution in the past and for the Court to make a finding that it is more likely than not that the respondent would be persecuted if he were to return to his native country. The respondent's concerns about his father's involvement with the Kwame Nkrumah party are quite some time ago, and it is not more likely than not that anyone would remember the respondent if he were to return

to his native country or be concerned about issues that occurred some 25 to 30 years ago.

Based upon the respondent's testimony, and the Court accepts his testimony as truthful, and the fact that the respondent has returned to Ghana on many occasions without any problems, and as recently as 2001 or 2002 on family business, the Court finds that the respondent has failed to meet his burden and has not established that he is a refugee as defined by the statute.

Based upon the above finding, the order of the Court is as follows:

ORDER

IT IS ORDERED that the respondent's application for withholding of removal be denied as a matter of law.

IT IS FURTHER ORDERED that the respondent be removed from the United States to his native country of Ghana.[1],[2]

s/_____
CLAREASE RANKIN-YATES
Immigration Judge

---

[1] Counsel has declined to designate a country other than Ghana, and the Court would designate Ghana.

[2] The respondent has declined to request voluntary departure. However, counsel for the Government has indicated for the record that the Government would oppose voluntary departure in this case and asylum because the respondent's conviction is tantamount to aggravated felony.